

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

NATHEN BARTON,

Plaintiff
v.

JOE DELFGAUW, XANADU
MARKETING INC., EXPERIAN
INFORMATION SOLUTIONS INC.,
STARTER HOME INVESTING INC., , &
JOHN DOE 1-10

Defendants.

Case No.:

FIRST AMENDED COMPLAINT
FOR A CIVIL CASE AND
INJUNCTIVE RELIEF

Jury Trial: ☒ Yes ☐ No

I. BASIS FOR JURISDICTION

Plaintiff Nathen Barton (“Barton” or “Plaintiff”) is a natural person and resident of Clark County, Washington. Nearly all the acts alleged in this complaint occurred in Clark County, Washington State, during the year 2021.

Jurisdiction in this court is correct because of where Plaintiff resides, and his residence is a nexus where Plaintiff suffered personal injury and invasion of privacy at the hands of the

1 Defendant. All the specifically detailed telemarketing phone calls and text messages alleged in
2 this complaint were made to one 360-area code cell phone with a phone number that is assigned
3 to Plaintiff in exchange for a monthly service fee.

4 However, the defendants have a pattern of texting this and other phone numbers without
5 the consent of the recipient.

6 All the specifically detailed calls and text messages alleged occurred during the year
7 2021. Defendants were or should have been aware they were reaching into the Western area of
8 Washington State by text messaging a 360-area code number.

9 II. THE PARTIES TO THE LITIGATION

10 Plaintiff Nathen Barton resides at 4618 NW 11th Cir, Camas WA 98607, inside the
11 bounds of Clark County, Washington State.

12 Defendant Xanadu Marketing Inc, ("Xanadu") is a Michigan company with the official
13 address of 14200 Ironwood Dr, Suite B, Grand Rapids Michigan 49534.

14 However, on their website *xanadumarketing.com* they report the address 956 3 Mile
15 Road NW, Grand Rapids MI 49544.

16 Xanadu's Michigan registered agent is Edward Winkler, with the address of 956 3 Mile
17 Road NW, Grand Rapids MI 49544.

18 Defendant Joe Delfgauw ("Delfgauw"), with the with address of 14200 Ironwood Dr,
19 Suite B, Grand Rapids Michigan 49534, is the President and Secretary of Xanadu. In fact, he is
20 the president of 10 Michigan companies that start with the word "Xanadu".

21 Xanadu says of themselves:
22
23
24

1 “Xanadu Marketing is not a telemarketer, but rather a marketing company that contacts
2 individuals who have provided their information in response to products and/or services
that the individual has expressed interest in.”¹

3 Plaintiff never expressed interest that would entitle a defendant in this action to solicit
4 him, nor invited or consented to a defendant in this action sending Plaintiff text messages or
5 initiating phone calls to Barton for the purpose of encouraging the purchase of goods or services.
6 Xanadu does not seem to be shy in sending unsolicited text messages, according to a 2019
7 Federal court case 1:19-cv-12018-FDS. Even after being personally served this lawsuit,
8 Delfgauw did not prevent further solicitation calls to Barton. For at least four months after
9 Delfgauw was personally served this Lawsuit, Defendants have placed or caused to be placed
10 solicitation calls to Barton.

11 Defendant Experian Information Solutions, Inc. (“Experian”), is an Ohio registered
12 company with principal address of 475 Anton Blvd, Costa Mesa CA 92626.

13 Experian may be served with process via C T Corporation System, 711 Capitol Way S
14 Ste 204, Olympia WA 98501.

15 Defendant Starter Home Investing Inc. (“Starter Home”) is a Michigan company with
16 official address 3181 Prairie St Suite 104, Grandville MI 49418. Starter Home only has two
17 d/b/a’s registered with the State of Michigan - LENDING CLOUD HOMES and LENDING
18 CLOUD AUTO.

19 Starter Home may be served with process through Edward Winkler, with the address of
20 956 3 Mile Road NW, Grand Rapids MI 49544.

21 John Doe 1-10 are other people and entities who materially participated in or had
22 positions of responsibility supervising the alleged illegal conduct.

23
24 ¹ See Exhibit 11 attached to Plaintiff’s original complaint, Case 1:19-cv-12018-FDS.

The role of each Defendant in the litigation will be explained below.

III. STATEMENT OF CLAIM

On July 9, 2020, Plaintiff registered and paid for a Washington State (360) telephone area code cellular number to be primarily used by his minor child. It is a Protected Computer as it is used in a manner that affects interstate or foreign commerce or communication. The phone is and was on a very limited service plan, with each call, text, or data usage subtracting from a fixed amount of each available each month.

The cell phone number at issue was registered on the FTC national *do-not-call* registry more than 31 days before April 1, 2021.

Text Messages from SMS Short Code 33959

On April 1, 2021, Plaintiff started receiving many text messages from the SMS short code 33959 which is registered to a Lending Cloud Homes², a registered *doing-business-as* for the Michigan company Starter Home Investing Inc (“Starter Home”), with the official address of 956 3 Mile Road NW, Grand Rapids, MI 49544.

The following seven (7) messages were received from SMS short code 33959 on April 1, 2021, at the indicated times:

11:04am	You just filled out our Rent to Own or HomeBuyer from! Let’s get you Approved! Start here http://buyzerodowns.com
11:07am	Did you get your Credit Score? Your Score will dictate your Options including (sic) Down Payment & Zero Down. Start below http://credit-score-first.com
11:10am	Here are 2, 3 and 4 Bedroom Rent to Own Homes! Http://find-a-home.xyz
11:14am	Take our 30 Second Quiz & see if you Qualify for up to \$6000 in Grants http://begin-here2day.xyz

² See <https://usshortcodedirectory.com/search/?shortcode-number=33959>

11:24am	A Lot if (sic) Rent to Own Home seekers qualify for the Roud (sic) Up Settlement of \$15000 in Compensation. Claim your (sic) below http://settlements4u.xyz
11:59am	Great News! Based on Your Score & Profile, you should get Approved for Zero Down Home Loans here http://buy-zero-down.xyz
12:04pm	Lastly, Get \$500 to \$5000 for moving costs, security deposits and rent/houes (sic) payments. http://loans-for-u.xyz and http://get-started-2day.live

In every case, the links in the text messages redirected to intermediate links before finally opening a last webpage, or directly linked to *xanadutracking.com*. These intermediate links always used the domains *xanadutracking.com* or *xanaduemarketing.outgrow.com*.

buyzerodowns.com was advertising for Get Hope To Own.

credit-score-first.com was advertising for *credit-score-first.com*.

find-a-home.xyz was advertising for *yourent2own.com*.

buy-zero-down.xyz was advertising for Get Hope To Own.

begin-here2day.xyz was advertising for Degree Locate.

settlement4u.xyz was advertising for Lawsuit Winning.

loans-for-u.xyz was advertising for Lions Gate Loans.

get-started-2day.live was advertising for Honest Loans.

Xanadu uses *xanaduemarketing.outgrow.com* as a tool to improve their business.

Time passed.

The following one (1) message was received from SMS short code 33959 on April 12, 2021, at the indicated time:

12:51pm	Complete this 60 second, 4 Question, Quiz to see if you Quality for \$6300 in Job Training/School Grants http://get-your-start.xyz/358819495
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The link in the text message redirected to the *xanadumarketing.outgrow.us* domain.

get-your-start.xyz was advertising for Classes & Careers

Starter Home Investing Inc. has the following officers and directors:

Title	Name	Address
PRESIDENT	JOE DELFGAUW	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA
TREASURER	NANCY GOULD	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA
SECRETARY	EDWARD WINKLER	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA
DIRECTOR	JOE DELFGAUW	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA

Xanadu Marketing Inc. owns *xanadutracking.com* and uses *xanaduemarketing.outgrow.com* and uses both in their telemarketing efforts. Xanadu Marketing Inc. has the following officers and directors:

PRESIDENT	JOE DELFGAUW	14200 IRONWOOD DR. NW SUITE B GRAND RAPIDS, MI 49534 USA
TREASURER	NANCY GOULD	14200 IRONWOOD DR. NW SUITE B GRAND RAPIDS, MI 49534 USA
SECRETARY	JOE DELFGAUW	14200 IRONWOOD DR. NW SUITE B GRAND RAPIDS, MI 49534 USA
DIRECTOR	ANGELA COLE	14200 IRONWOOD DR. NW SUITE B GRAND RAPIDS, MI 49534 USA

XanaduMarketing.com, owned by Xanadu Marketing Inc., lists the address of 956 3 Mile Rd NW, Grand Rapids MI 49544. Although Starter Home used materially significant Xanadu company assets as part of these eight text messages solicitations, Xanadu does not have an agreement or contract in place with Starter Home.

This is part of a pattern and practice – when an entity under Delfgaw’s control has a need, and another entity under Delfgaw’s control has a resource that satisfies the need, Delfgaw simply bolts them together to make a new joint venture.

In doing so, Delfgaw comingles the business operations of many registered and unregistered businesses.

Text Messages from SMS Short Code 365365

On April 5, 2021, and April 8, 2021, Plaintiff received one text message each day from the SMS short code 365365, a SMS short code registered to a “Lending Cloud Alerts” which appears to be a business entity different yet from Starter Home and Xanadu.

The entity “Lending Cloud Alerts” is not a registered business name in the State of Michigan.

“Lending Cloud Alerts” is an unregistered business entity under Delfgauw’s control.

Plaintiff alleges that Delfgauw operates the business “Lending Cloud Alerts” as a Sole Proprietor.

5-Apr-21	
8:46am	2, 3 & 4 Bedroom, 2 Bath Homes from \$599/mo! http://clickto-startnow.club/358819495 Credit Issues Ok, Low Down Payment
8-Apr-21	
10.11am	New Auto Insurance Company offer #37/mo to people in your Zip Code! Plus 1-2 months of no payments! http://get-started-today.live/358819495

The link <http://clickto-startnow.club/358819495> redirected through *xanadutracking.com* to yet a different website.

clickto-startnow.club was advertising for *TheUltimateRentToOwnHomeProgram.com*.

get-started-today.live was advertising for Complete These Offers.

Plaintiff alleges that Delfgauw, acting in the legal capacity of a Sole Proprietor, used the entity “Lending Cloud Alerts” in a Joint Venture with Xanadu to initiate these two text messages to Plaintiff.

Xanadu has admitted there is no contract or agreement with any other entity related to the telemarketing of Barton.

This is another example of Delfgauw co-mingling business operations of several entities, and operating several entities under his control as one venture.

Text Messages from (803) 618-8038

On April 2, 2021, Plaintiff received a text message from (803) 618-8038 with the message
 “Your refund filing date is approaching. Arrange your meeting with Tax Axe and
 our licensed agents!

Answer

RTN55

And proceed!”

The Tax Axe is a registered doing-business-as for Income Tax Planning Group Inc.
 (“TPG”). TPG uses the website *thetaxaxe.org*, and this website uses the same internet name
 servers as *xanadumarketing.com*³. This indicates that the two websites use the same web hosting
 account.

TPG’s corporate officers and directors are:

PRESIDENT	JOE DELFGAUW	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA
TREASURER	NANCY GOULD	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA
SECRETARY	JOE DELFGAUW	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA
DIRECTOR	JOE DELFGAUW	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA

And TPG’s official address is 956 3 Mile Road NW, Grand Rapids Michigan 49544.

On April 9, 2021, TPG sent a second text solicitation to Plaintiff.

Delfgaww chose to host the Xanadu and TPG websites on the same server.

Delfgaww chose to use the internet servers for Xanadu and TPG for two supposedly
 independent businesses.

Xanadu has admitted there are no contracts or agreements between Xanadu and Tax
 Planning Group Inc. related to this text message to Barton.

This is another example of Delfgaww co-mingling business operations of several entities,
 and operating several entities under his control as a Joint Venture.

³ See <https://dnschecker.org/ns-lookup.php?query=thetaxaxe.org> and <https://dnschecker.org/ns-lookup.php?query=xanadumarketing.com>

Solicitations from 1st Time Home Buyer Program Inc

On April 13, 2021, Plaintiff missed a phone call from (360) 230-6935. 1st Time initiated the call for the purposes of encouraging Plaintiff to purchase education related goods or services.

On April 13, 2021, Plaintiff received a phone call from (360) 318-7867. The caller introduced herself as “Francine”, a “rent to own specialist” from “the Cardinal Program”. Francine started asking Barton rent to own, credit, and credit score questions.

Francine was advertising for 1st Time Home Buyer Program Inc.

Plaintiff later learned that “the Cardinal Program” is a *doing-business-as* for 1st Time Home Buyer Program Inc., and they placed this call to encourage Plaintiff to purchase goods or services.

On April 20, 2021, Plaintiff received a phone call from (360) 230-6935. The caller called for the purpose of encouraging Plaintiff to purchase education related goods or services. The caller did not identify the company behind the phone call in the first 60 seconds of the phone call. Eventually the caller emailed Plaintiff from agent@thecardinalprogram.com. The website *thecardinalprogram.com* lists the Contact address as

3181 Prairie St SW
Grandville MI 49418

It wasn’t until the caller emailed Barton that the caller identified the entity behind the call., and that did not happen until nearly three minutes into the phone call.

The caller was advertising for 1st Time Home Buyer Program Inc.

Cardinal Program (“Cardinal”) is a State of Michigan registered *doing-business-as* name for 1st Time Home Buyer Program Inc. (“1st Time”), who’s 2019 Annual Report listed their registered agent as Edward Winkler with the address of

3181 Prairie St SW
Grandville MI 49418

In a pattern becoming all too familiar, 1st Time's officers and directors are

PRESIDENT	JOE DELFGAUW	956 3 MILE ROAD N.W. GRAND RAPIDS, MI 49544
TREASURER	NANCY GOULD	956 3 MILE ROAD N.W. GRAND RAPIDS, MI 49544
SECRETARY	JOE DELFGAUW	956 3 MILE ROAD N.W. GRAND RAPIDS, MI 49544
DIRECTOR	JOE DELFGAUW	956 3 MILE ROAD N.W. GRAND RAPIDS, MI 49544

Website *thecardinalprogram.com* uses the same internet name servers as *xanadumarketing.com*⁴. This indicates that the two websites use the same web hosting account and are co-mingling business operations..

Xanadu has admitted there are no contracts or agreements between Xanadu and 1st Time Home Buyer Program Inc.. related to these phone calls to Barton. This is another example of Delfgaw co-mingling business operations of several entities, and operating several entities under his control as one venture.

On April 30, 2021, Plaintiff received a phone call from (360) 318-7867. The caller identified herself as "Nesheka" a "housing specialist at The Cardinal Program".

She said she was calling about "Rent to own" options and went on to ask Barton about his credit score and any 'bumps' in Barton's credit.

Nesheka called on behalf of 1st Time for the purpose of encouraging Plaintiff to purchase housing and credit related goods or services.

Nesheka was advertising for 1st Time Home Buyer Program Inc.

More about (360) 318-7867

Plaintiff's phone revealed a history of calls from (360) 318-7867:

12:47pm, April 30, 2021, a call discussed above from 1st Time.

⁴ See <https://dnschecker.org/ns-lookup.php?query=thecardinalprogram.com> and <https://dnschecker.org/ns-lookup.php?query=xanadumarketing.com>

1 2:55pm, April 13, 2021, an 8 minute 33 second incoming call, a call discussed above from
2 1st Time

3 10:00am, April 5, 2021, a missed call from 1st Time, initiated for the purpose of
4 encouraging Plaintiff to purchase goods or services.

5 10:10am, April 2, 2021 a 26 second incoming call from 1st Time, initiated for the purpose
6 of encouraging Plaintiff to purchase goods or services.

7 **Enter ApexPageBuilder.com**

8 On June 11, 2021, Plaintiff received a text message, seemingly from SMS short code
9 94657. This SMS short code is associated with Houses into Homes, and email address
10 info@houses-into-homes.com. The internet domain houses-into-homes.com uses the internet
11 name servers for and the same hosting as *xanadumarketing.com*. On the webpage *houses-into-*
homes.com/terms-of-service/, the physical address for this business entity is listed as:

12 956 3 Mile Rd NW,
13 Grand Rapids , MI 49544

14 Which matches the physical address used by many entities connected to Delfgauw. House
15 into Homes is based in Michigan but is not a registered business entity or *doing-business-as* in
16 the state of Michigan. Plaintiff alleges that legally, Delfgauw is operating House into Homes as
17 a Sole Proprietorship under his control.

18 The June 11 text message from SMS short code 94657 said:

19 Add your Rent, Netflix & Amazon Prime to your Credit Report to increase your
20 Score! Start below, It's Free <http://increasemyscore.live/358819495>

21 The internet domain *increasemyscore.live* uses the internet name servers for
22 *xanadumarketing.com*. Clicking on the link for *increasemyscore.live* redirects to the domain
23 *apexpagebuilder.com*. The domain *apexpagebuilder.com* uses the internet name servers for
24 *xanadumarketing.com*.

Delfgauw owns and controls *apexpagebuilder.com*.

Xanadu has admitted there are no contracts or agreements between Xanadu and House into Homes related to these text messages initiated to Barton.

Delfgauw mixed and matched even more entities to create these solicitations. The domain *apexpagebuilder.com* lists the phone number (888) 631-7141, but that phone number is also associated with Assisting Renters Inc⁵. The officers and directors for Assisting Renters Inc are:

PRESIDENT	JOE DELFGAUW	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544
TREASURER	NANCY GOULD	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544
SECRETARY	EDWARD WINKLER	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544
DIRECTOR	JOE DELFGAUW	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544

And the website *cloudbasedcampligns.com* also lists (888) 631-7141 as a contact telephone number.

To summarize, Barton received a text message from “Houses into Homes”, an unregistered business entity, that used Xanadu company assets to deliver a solicitation from *apexpagebuilder.com*, which uses a phone number tied to Assisting Renters Inc.

This is another example of Delfgauw creating a Frankenstein monster of a joint venture between various registered and unregistered business operations under his control. Clicking the link <http://increasemyscore.live/358819495> opens the website <https://apexpagebuilder.com/p/add-rent-your-credit-report-3>, and the purpose of that page is to encourage consumers to click a large red button that directs consumers to the website *Experian.com*, for the purpose of encouraging Plaintiff to sign up for *Experian.com* products and services. *Experian.com* is owned by Experian Information Solutions, Inc.

On August 4, 2021, Plaintiff received a text message, seemingly from SMS short code 94657. The text message said

⁵ See <https://start.cortera.com/company/research/l8q8jqo7p/assisting-renters/>

1 Add your Rent, Netflix & Amazon Prime to your Credit Report to increase your
2 Score! Start below, It's Free <http://increasemyscore.live/358819495>

3 Exactly as the June 11 text mentioned above, the solicitation used the same hodge podge
4 Frankenstein monster of a joint venture to deliver a text message initiated with the intent to
5 encourage Plaintiff to sign up for *Experian.com* products and services.

6 **Roundup Lawsuit unsolicited call #3**

7 On July 13, 2021, Plaintiff received a text message from SMS short code 33959 which is
8 registered to a Lending Cloud Homes⁶, a registered *doing-business-as* for Starter Home. The
9 message said:

10 Each Person that used Round Up can receive \$15,000 in Compensation.
11 Claim yours below <http://rounduplawsuit.live/358819495>

12 The domain *rounduplawsuit.live* uses the internet name servers for *xanadumarketing.com*.
13 Xanadumarketing.com is owned by Xanadu Marketing Inc.

14 Clicking on the URL in the text message opened up a new webpage for
15 weedkillerclaim.com by use of the intermediate domain *xanadutracking.com*.

16 Xanadu has admitted there is no contract or agreement with Lending Cloud Homes
17 related to the telemarketing of Barton. This is another example of Delfgauw co-mingling
18 business operations of several entities, and operating several entities under his control as one
19 venture..

20 **These calls are annoying**

21 The phone ringing and buzzing and missed calls are obnoxious, an invasion of privacy, and
22 a waste of time. These phone calls were initiated to encourage Plaintiff to purchase goods or
23 service.

24 ⁶ See <https://usshortcodedirectory.com/search/?shortcode-number=33959>

Joe Delfgauw's Personal Liability

Delfgauw, as President and owner and manager, uses assets under his control, be they unregistered business entities or registered companies, of different companies under his control to initiates text messages and phone calls to consumers sell products and services such as consumer credit enhancement, higher education, home ownership, rental homes, loans, and tax preparation.

Under Delfgauw's supervision and management, Plaintiff received many text message and phone call solicitations luring him to different websites and invitations to spend money for goods and services. The websites and outbound solicitations Barton received were done through a mish-mash of telephone numbers, internet domains, internet name servers, and phone numbers and hosting and business assets bolted together from many different corporations, all owned by or governed by Delfgauw.

In egregious examples, Barton received multiple text messages from "Houses into Homes", and "Lending Cloud Alerts", both unregistered business entities controlled by Delfgauw, that used Xanadu internet domain servers and web hosting to deliver multiple solicitations from *apexpagebuilder.com*. *Apexpagebuilder.com* is not a registered business or doing-business-as name in the State of Michigan, but it is controlled by Delfgauw, uses the same name servers as Xanadu (controlled by Delfgauw), yet different web hosting.

Apexpagebuilder.com directs people accessing that website to call a phone number shared by Assisting Renters Inc, another Delfgauw controlled company.

Put a different way, several solicitations alleged by Barton was sent by a Frankenstein monster joint venture between different registered and unregistered business entities – one to craft the text messages, one creates the websites displayed in the text message (*increasemyscore.live*, an unregistered business name controlled by Delfgauw), another dials the

1 phone and initiates transmission of the text message (Houses into Homes, an unregistered
2 business name but controlled by Delfgauw), another answers the phone calls generated by the
3 people clicking and visiting those destination websites (Assisting Renters Inc), and yet one more
4 providing the internet and tracking infrastructure needed to make the system above functional
5 (Xanadu Marketing Inc.) to create income for himself, his companies, and the entities paying
6 Delfgauw and his companies to market the goods and services. Further, all these entities under
7 Delfgauw's control that were used to telephone solicit Barton are shams and the alter ego of
8 Delfgauw.

9 Delfgauw and Xanadu admit they have no agreements or contracts between these
10 different registered and unregistered business names and entities. If some tool or entity or
11 widget is needed that is under the control of Delfgauw, Delfgauw simply presses it into service
12 as part of this large joint venture telemarketing program.

13 This is a breach of the duty Delfgauw owes to each separate company under his
14 supervision, and to the extent that Delfgauw operates in a Sole Proprietor capacity with these
15 unregistered business entity names, he does so with his personal liability.

16 Further, Holding Delfgauw personality liable for the widespread conduct of his business
17 operations is likely the only way to ensure Plaintiff can collect a judgement against the different
18 corporations under his supervision.

19 **Commercial Telephone Solicitors**

20 RCW 19.158.020 says:

21 (1) A "commercial telephone solicitor" is any person who engages in commercial
22 telephone solicitation

23 (2) "Commercial telephone solicitation" means:
24

1 (a) An unsolicited telephone call to a person initiated by a salesperson and
2 conversation for the purpose of inducing the person to purchase or invest in
property, goods, or services;

3 RCW 19.158.050(1) says in part:

4 “In order to maintain or defend a lawsuit or do any business in this state, a commercial
5 telephone solicitor must be registered with the department of licensing.”

6 Although RCW 19.158.050(3) says “The department of licensing shall issue a
7 registration number to the commercial telephone solicitor.”, in practice this Commercial
8 Telephone Solicitor “registration number” appears as an endorsement on the business license
9 issued by The Washington State Department of Revenue.

10 Experian is licensed to do business in Washington but does not have this endorsement on
11 their Washington State business license

12 The other Defendants are not registered to do any business in Washington State, thus do
13 not have this endorsement on their not-existing Washington State business license, and they
14 acted as unlicensed commercial telephone solicitors while soliciting goods and services to
15 Plaintiff in conversation.

16 **IV. RELIEF**

17 **Federal Claims**

18 **TCPA 47 U.S.C. 227**

19 Defendants violated the regulations governing the TCPA, 47 C.F.R § 64.1200, and TCPA
20 47 U.S.C. 227(c)(5) by calling or texting Plaintiff’s cellular telephone number without invitation
21 or consent.

22 Defendants also violated the regulations governing the TCPA, 47 C.F.R § 64.1200(d)(4),
23 and thus TCPA 47 U.S.C. 227(c) by failing to provide the called party with the name of the
24 individual caller, the name of the person or entity on whose behalf the call is being made, and a

1 telephone number or address at which the person or entity may be contacted, as found in *Robison*
 2 v. *7PN, LLC*, Case No. 2:21-cv-00308-TC, 2021 U.S. Dist. LEXIS 211963 (D. Ut. November 1,
 3 2021)

4 Washington State Claims

5 RCW 19.158

6 RCW 19.158.040 says:

Unprofessional conduct.

7 In addition to the unprofessional conduct described in RCW 18.235.130, the
 8 director of the department of licensing may take disciplinary action for any of the
 following conduct, acts, or conditions:

- 9 (1) It shall be unlawful for any person to engage in unfair or deceptive commercial
 telephone solicitation.
- 10 (2) A commercial telephone solicitor shall not place calls to any residence which will
 be received before 8:00 a.m. or after 9:00 p.m. at the purchaser's local time.
- 11 (3) A commercial telephone solicitor may not engage in any conduct the natural
 12 consequence of which is to harass, intimidate, or torment any person in
 connection with the telephone call.

13 Defendants were not registered as Commercial Telephone Solicitors with the Washington
 14 State Department of Licensing when many of the solicitation calls were placed to Plaintiff, in
 15 violation of RCW 19.158.050(1).

16 RCW 19.158.110(1) requires:

17 (1) Within the first minute of the telephone call, a commercial telephone solicitor or
 salesperson shall:

18 (a) Identify himself or herself, the company on whose behalf the solicitation is being
 19 made, the property, goods, or services being sold;

20 In many solicitation calls initiated by Defendants to Plaintiff, Defendants violated
 21 Washington State RCW 19.158.110(1) by not identifying the company on whose behalf the
 22 solicitation was being made.

23 Defendants violated Washington State RCW 19.158.150 many times by soliciting
 24 Plaintiff on his cell phone while they were not registered on with the Washington State

1 Department of Licensing as Commercial Telephone Solicitors, or while working on behalf of an
2 unregistered Commercial Telephone Solicitor.

3 **RCW 80.36.390(2)**

4 Washington State RCW 80.36.390(2) says

5 A person making a telephone solicitation must identify him or herself and the company or
6 organization on whose behalf the solicitation is being made and the purpose of the call
within the first thirty seconds of the telephone call.

7 In many solicitation calls the Defendants failed to identify a legally identifiable company or
8 organization name behind the solicitation within the first 30 seconds of the phone calls.

9 **RCW 19.190**

10 Washington State RCW 19.190.060(1) prohibits anyone conducting business in
11 Washington State from initiating the transmission of an electronic commercial text message to a
12 telephone number assigned to a Washington state resident's cell phone.

13 The Washington State legislature determined that "[d]amages to the recipient of a . . .
14 commercial electronic text message sent in violation of this chapter are five hundred dollars, or
15 actual damages, whichever is greater." RCW 19.190.040(1).

16 The Washington State legislature clearly stated that the sending of an email message
17 prohibited by CEMA is a violation of the Consumer Protection Act (RCW 19.190.030(1))

18 The legislative history of RCW 19.190 states that the recipient of both commercial email
19 messages and commercial text messages "may bring a civil action against the sender for the
20 greater of \$500 or actual damages." Wash. Final Bill Rep., 1998 Reg. Sess. H.B. 2752 (Apr. 6,
21 1998); Wash. Final Bill Rep., 2003 Reg. Sess. H.B. 2007 (June 27, 2003). Having now
22 determined that there is no private right of action under CEMA, the only way to give effect to the
23 legislature's stated intent is to construe the liquidated damages provision as establishing the
24

injury and causation elements of a CPA claim. *Gragg v. Orange Cab Company et al*, No. 2:2012cv00576 - Document 162 (W.D. Wash. 2015)⁷

Treble Damages

Plaintiff believes the record shows that Defendants' violations of the law were willful or knowing. Therefore, Plaintiff asks for treble damages under TCPA 47 U.S.C. 227(c)(5) and the presumption that violations of RCW 19.158.030 triple damages under the Washington State Unfair Business Practices Act RCW 19.86.

Injunctive Relief

TCPA 47 U.S.C. 227(c)(5)(A) allows "an action based on a violation of the regulations prescribed under this subsection to enjoin such violation,".

Washington State RCW 80.36.390(6) says:

A person aggrieved by repeated violations of this section may bring a civil action in superior court to enjoin future violations, to recover damages, or both.

Plaintiff is not unique – he simply had the misfortune to be targeted by Defendants' mass calling and texting machine. It is reasonable to believe that Defendants have done this many times in the past and will continue harming the residents of this State and other States in the future.

Plaintiff asks this Court to enjoin the Defendants from calling phone numbers using pre-recorded or artificial voices without consent.

All other Possible Damages

Plaintiff prays for all possible damages, in law and in equity, statutory, real, and punitive, that he might entitled too, of not less than \$61,500. Plaintiff asks for other awards, examples

⁷ <https://cases.justia.com/federal/district-courts/washington/wawdce/2:2012cv00576/183407/162/0.pdf?ts=1447174101>

being but are not limited to, court costs, attorney fees, pre-judgement interest, and post-judgement interest. Barton has consulted with an attorney in this matter and is obligated to pay that attorney the just and proper rate as agreed to in the attorney engagement agreement.

/s/ Nathen Barton

Nathen Barton

12/31/2021

Dated

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V. CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2021, I electronically filed the foregoing with the Clerk of the Court using the Court's CM/ECF System, which will automatically generate a Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF System, which includes the Defendant. The said Notice of Electronic Filing specifically identifies recipients of electronic notice.

Executed on December 31, 2021.

/s/ Nathen Barton

Nathen Barton